RM. THIRUPPATHI CHETTIAR & ANOR.
v.
TEH KEONG KHENG.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Buhagiar, J.) July 24, 1952]

[Kuala Lumpur — Civil Appeal No. 12 of 1952]

Japanese Judgments and Civil Proceedings Ordinance, 1946 — Executors — Agreement for the sale of land subject to conditions — Civil Procedure Code, s.s. 467(i)(f), 469(a).

This was an appeal from the judgment of Wilson, J. reported at p. 46 ante.

During the Japanese occupation of Malaya, by an agreement in writing dated June 1st, 1945, the administrator with will annexed agreed to sell land subject to his obtaining the approval of the Japanese High Court and subject to the defendant obtaining the approval of the Japanese Governor. The approval of the Court was obtained and an application to the Governor was made but the approval was never received, as soon after, the Japanese surrendered. In November 1945 the plaintiffs became administrators of the deceased and they sought a declaration that the agreement was null and void and of no effect on the grounds that: (i) the application to sell was made ex parte and no notice of it was served on or given to any person beneficially interested: (ii) the order of the Japanese did not approve the sale to the defendant specifically; and (iii) the approval of the Japanese Governor was not obtained.

The learned trial Judge held that he had no power in these proceedings to set aside the order of the Japanese Court and that the appropriate machinery was to institute proceedings under the Japanese Judgments and Civil Proceedings Ordinance. No such proceedings were taken under this Ordinance. The claim was dismissed. Against this decision the plaintiffs appealed. On the appeal the Counsel for the appellants relied on two points (i) the application to the Japanese Court for permission to sell was ex parte and therefore a nullity, and (ii) the approval of the Japanese Governor to sale was never obtained.

Held, dismissing the appeal (i) that the learned trial Judge held rightly that the appellants could not by means of these proceedings circumvent the provisions of the Japanese Judgments and Civil Proceedings Ordinance, 1946, and that the Judgment of the Japanese Court must still be deemed to be effective; (ii) that the Japanese Governor of Selangor never refused approval of the purchase.

COURT OF APPEAL.

R. V. H. Rintoul for the appellants.

H. Y. Teh for the respondent.

Cur. Adv. Vult.

The Judgment of the Court was delivered by Mathew, C.J., (F.M.), with which Sir Charles Murray-Aynsley, C.J., (Singapore), and Buhagiar, J., concurred.

Mathew, C.J. (F.M.) : — The facts in this case are fully set out in the judgment of the learned trial judge against which judgment the appellants are now appealing. The main purpose of the case was to obtain a declaration that a written agreement concerning the sale of certain lands to the defendant dated the 1st June, 1945, was null and void and of no legal effect.

Counsel for the appellants relies or two points : (i) the application to the Japanese Court for permission to sell was *ex parte* and therefore a nullity, and (ii) the approval of the Japanese governor to the sale was never obtained.

As regards the first point, the learned trial judge held that he had no power in these proceedings to set aside the order of the Japanese Court. The appropriate machinery for enabling the Court to do this is provided under the Japanese Judgments and Civil Proceedings Ordinance No. 29 of 1946. No proceedings were taken under this Ordinance. The trial judge held rightly in my opinion that the appellants could not by means of these proceedings circumvent the provisions of Ordinance No. 29 of 1946, and that the judgment of the Japanese Court must still be deemed to be effective.

As regards the second point, the Japanese governor of Selangor never refused approval of the purchase. An application had been made to him for his approval, but before the approval had been obtained the war with Japan was over and the Japanese governor had left the State.

The appellants are setting up the default of their predecessors in title as a basis for this claim. The order of the Japanese Court was obtained by them and is binding on the present appellants.

I would dismiss the appeal with costs, and order that the deposit in Court be paid out to the respondent against his costs.

Appeal dismissed.

AV. PL. PALANIAPPA CHETTIAR
v.
KOH KEH HONG.

[Court of Appeal (Mathew C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) July 24, 1952]

[Kuala Lumpur — Civil Appeal No. 9 of 1952]

Land — Sale of — Mortgage outstanding — Attornment of tenants to purchaser — Registrable transfer — Variation of written contract by conduct — Abandonment of relief prayed for — Discretion of Court.

This was an appeal against the judgment of Abbott, J. reported sub nom Koh Keh Hong v. Av. Pl. Palaniappa Chettiar (1952) M.L.J. 29.

In this case the defendant-appellant agreed to sell to the plaintiff three parcels of land. A document of transfer was executed by the defendant and given to the plaintiff. The purchase price was handed over to Mr. Yong Sze Lin who held it as stake holder. The lands

were charged to the Overseas Chinese Bank, and Mr. Yong Sze Lin was instructed by the defendant to arrange for the discharge of the charge and pay the amount due from the purchase money. There was a caveat lodged on the lands by the Registrar of Titles, and this Mr. Yong Sze Lin arranged to be removed. The defendant introduced the plaintiff to the tenants on the land and told them to pay the rents to him. Before he could pay off the charge on the properties to the Overseas Chinese Bank a caveat, the reason of which is not known, was lodged by the Proper Registering Authority. Thereafter there was no point in paying off the bank, and the matter remained in abeyance until Mr. Yong Sze Lin sent the purchase price to the defendant's solicitors on the 19th April, 1945. The defendant's solicitors refused to accept it.

Held, that the learned trial judge found as a fact that the agreement for sale has been varied and that the respondent had agreed to accept the land encumbered as it was. The fact that the respondent could not have succeeded in an action for specific performance in 1943 is not relevant.

The appeal was dismissed with costs, but by agreement the order of the learned trial Judge was varied by including an order that the appellant will be indemnified in respect of any claim by the Overseas Chinese Bank in respect of the charge under the Debtor & Creditor (Occupation Period) Ordinance, 1948.

COURT OF APPEAL.

P. J. D. Regester for the appellant.

R. V. H. Rintoul for the respondent.

Cur. Adv. Vult.

The Judgment of the Court was delivered by Mathew, C.J., with which Sir Charles Murray-Aynsley, C.J., (Singapore) and Wilson, J., concurred.

Mathew, C.J. (F.M.) : — In this case the defendant-appellant agreed to sell to the plaintiff three parcels of land. A document of transfer was executed by the defendant and given to the plaintiff. The purchase price was handed over to Mr. Yong Sze Lin who held it as stake-holder. The lands were charged to the Overseas Chinse Bank, and Mr. Yong Sze Lin was instructed by the defendant to arrange for the discharge of the charge and pay the amount due from the purchase money. There was a caveat lodged on the lands by the Registrar of Titles, and this Mr. Yong Sze Lin arranged to be removed. The defendant introduced the plaintiff to the tenants on the land and told them to pay the rents to him. Before he could pay off the charge on the properties to the Overseas Chinese Bank a caveat, the reason which is not known, was lodged by the Proper Registering Authority. Thereafter there was no point in paying off the bank, and the matter remained in abeyance until Mr. Yong Sze Lin sent the purchase price to the defendant's solicitors on the 19th April, 1945. The defendant's solicitors refused to accept it.

The appellant's contention is that he, being unable to transfer the land to the respondent free of all encumbrances, is entitled to have the land back plus all the rents collected by the respondent on payment to the respondent of the forfeit of $4,000 provided for under the agreement of sale.

It has been suggested by the appellant that Mr. Yong Sze Lin, had he been more diligent, could have had the transfer registered before the second caveat by the Proper Registering Authority was lodged. There are no merits in this suggestion, and it is clear from the correspondence that the delay in registering the transfer was occasioned by the necessity to re-register in the Seremban High Court a power of attorney. The trial judge found as a fact that the agreement of sale had been varied and that the respondent had agreed to accept the land encumbered as it was. The fact that the respondent could not have succeeded in an action for specific performance in 1943 is not relevant. The appellant has been unfortunate; he has derived no financial benefit from the deal and is probably under a liability to pay off the charge to the Overseas Chinese Bank.

I would dismiss the appeal with costs, but by agreement the order of the learned trial judge should be varied by including an order that the appellant will be indemnified in respect of any claim by the Overseas Chinese Bank in respect of the charge under the Debtor and Creditor (Occupation Period) Ordinance, 1948. The deposit in Court will be paid to the respondent against his costs.

Appeal dismissed.

S. S. T. MUTHUCHELLAPPA CHETTIAR
v.
THE INDIAN OVERSEAS BANK LTD.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) July 24, 1952]

[Kuala Lumpur — Civil Appeal No. 3 of 1952]

Agency — Termination of Agency by war — Plea of novation — Scope of agency — Rectification by constituted attorney.

This was an appeal against the Judgment of Abbott J. reported sub nom. **The Indian Overseas Bank Ltd. v. S.S.T. Muthuchellappa Chettiar (1952) M.L.J. 25.** The only point in this case, which was a claim for money lent by the Overseas Indian Bank Ltd., was whether one R.M.K. Kumarappa Chettiar had the authority of his principal, the defendant-appellant, to borrow the money. The trial Judge held that although Kumarappa Chettiar's power of attorney had ceased in 1946 nevertheless as he acted under the defendant's instructions to carry on, he was acting within the scope of his agency in making loans and if there was a novation it was on behalf of the principal. He further held that payment by appellant's new attorney, Palaniappa Chettiar, with a promise to repay constituted a ratification of Kumarappa Chettiar's act and against this decision the defendant appealed. The appellant's main ground for appeal was that Kumarappa Chettiar had no authority, expressed or implied, to borrow the money and bind the defendant-appellant. The